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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,552

08/02/2005

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09/09/2008

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EXAMINER

BAHTA, KIDEST

ART UNIT

PAPER NUMBER

2123

MAIL DATE

DELIVERY MODE

09/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/511,552	<b>Applicant(s)</b> CREMASCHI ET AL.	
	<b>Examiner</b> KIDEST BAHTA	<b>Art Unit</b> 2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/2/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**Claim Rejections - 35 USC § 112**

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the spatial coordinates (X, Y, Z)" in line 5.

There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the profiles, the volume or the spatial coordinates" in line 18. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said coefficients" in line 20. There is insufficient antecedent basis for this limitation in the claim. Previously "said spatial coordinates" it is unclear referring the same limitation or not.

Claim 1 recites the limitation "the range" in line 21. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the base size" in line 22. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 26-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Sajedi et al. (US 2003/0023306).

Regarding claims 26-30, Sajedi discloses in abstract, Fig. 12-13, The present invention is an exemplary embodiment of the present invention is directed to a system, method and computer program product for creating a three-dimensionally reconfigurable cavity. The system can include a container that is configurable to create a three dimensional cavity. The system can be operative to form a footwear last in the cavity. The last can be formed from a plastic-like material. The system can include a blow molding apparatus having at least one directional deflector. The container can be capsule, hemispherical, cylindrical, or spherical-shaped. The system can include a container having holes to receive rods. The system can include an array of rods. The rods can be movable through the container. The system can further include rods that are threaded; gear-driven; coupled to a belt; coupled to a partial belt; or belt-driven. The cavity can be formed by an inner end of the rods. If more than one rod occupies a single point of the cavity, then only one rod participates in forming the cavity and other rods will not participate. Participating rods can be selected according to an optimizing module. The software module can determine an intersection of a rod with a digitized cluster of points representing a 3 dimensional surface. A method of forming a footwear last from a collapsible and expandable last is described.

***Allowable Subject Matter***

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4. Claims 1-25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: Sajedi et al (U.S. 2002/0023306) discloses computer program product for creation a three dimensionally reconfigurable cavity, none of these reference taken either alone or in combination with the prior art of record disclose a method for scal manufacturing a series of shoe shape distributed on series of footwear size starting from a base shoe shape, in combination with the remaining elements and features of the claimed invention. It is for these reasons that the applicant's invention defines over the prior art of record.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed Kidest Bahta whose telephone number is 571-272-3737. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application information Retrieval IPAIRI system. Status information for published applications may be obtained from either Private PMR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAG system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kideest Bahta/

Primary Examiner, Art Unit 2123